

ENTERED

September 05, 2023

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

GEORGE R. JARKESY, JR.,

Plaintiff,

v.

SECURITIES AND EXCHANGE
COMMISSION,

Defendant.

3:22-cv-00405

ORDER

Following the settlement conference conducted by Judge Sheldon on August 22, 2023 (ECF 18), the parties agree to the following scheduling order.

1. This is an action seeking the production of records from the SEC under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Plaintiff submitted to the SEC a FOIA request with multiple subparts.

2. On January 20, 2023, the SEC issued an interim partial response to Plaintiff’s FOIA request and released to Plaintiff the non-exempt portions of 33 pages of records responsive to Plaintiff’s request. The January 20, 2023 interim partial response addressed FOIA request subparts 1, 3, 6, 10, 11, 12(b), and 12(c). As detailed below, Plaintiff disputes aspects of this interim partial response.

3. On August 10, 2023, the SEC issued an interim partial response to FOIA request subpart 9 and released to Plaintiff what it asserts are the non-exempt portions of 55 pages of records. As detailed below, Plaintiff disputes aspects of this interim partial response.

4. With respect to FOIA request subparts 2, 4, 5, 7, 8, and 12(a), the SEC has informed Plaintiff that the SEC's search returned approximately 3,400 records that are potentially responsive to those subparts. By October 27, 2023, the SEC will provide Plaintiff with a log of the records responsive to FOIA request subparts 2, 4, 5, 7, 8, and 12(a). The log will resemble the sample log that the SEC provided Plaintiff on August 24, 2023.

5. The SEC anticipates that, pursuant to the FOIA exemptions, it will withhold certain information from records responsive to subparts 2, 4, 5, 7, 8, and 12(a). Plaintiff anticipates contesting those withholdings. To resolve the parties' anticipated disputes concerning those withholdings prior to the SEC's processing all records potentially responsive to subparts 2, 4, 5, 7, 8, and 12(a), the parties will each select five exemplar records responsive to each of these subparts. The parties will then address the SEC's withholdings from those exemplar records in their summary judgment briefing, as described below. The SEC will apply the Court's findings concerning those withholdings from the sixty exemplar records when it processes the remaining records responsive to subparts 2, 4, 5, 7, 8, and 12(a).

6. By October 27, 2023, the SEC will process and provide Plaintiff with five exemplar records responsive to each of the FOIA request subparts 2, 4, 5, 7, 8, and 12(a)

(for a total of 30 records). By October 31, 2023, based on the SEC's log described above, Plaintiff will select five exemplar records for each of the subparts 2, 4, 5, 7, 8, and 12(a) (for a total of 30 records). Plaintiff will also inform the SEC which withholdings he contests in the 30 exemplar records the SEC will have provided. By November 21, 2023, the SEC will process and provide Plaintiff with the 30 exemplar records selected by Plaintiff. By November 27, 2023, Plaintiff will inform the SEC which withholdings he contests in those records.

7. The parties will address the following issues on summary judgment:
 - a. Whether subpart 1 constitutes an improper FOIA request.
 - b. Whether the SEC properly withheld information from the sixty exemplar records responsive to subparts 2, 4, 5, 7, 8, and 12(a) and from the records released in connection with subpart 9.
 - c. Whether the SEC has fully responded to subpart 3.
 - d. Whether the SEC performed an adequate search for records responsive to subparts 6, 11, 12(b), and 12(c), and properly asserted that no responsive records exist with respect to those subparts.


8. The SEC will file its motion for summary judgment by December 1, 2023. Plaintiff will file its opposition to the SEC's motion by December 29, 2023. The SEC will file its reply by January 19, 2024.

9. Plaintiff will withdraw its currently pending motion for summary judgment, filed on June 21, 2023 (ECF 13), without prejudice to the refiling of a motion for

summary judgment by Plaintiff subsequent to the Court's ruling on the SEC's motion for summary judgment.

10. Following the completion of the parties' briefing on the SEC's motion for summary judgment, and prior to the Court's decision on that motion, the parties will attend a settlement conference before Judge Peter Bray.

SIGNED on Galveston Island this 5th day of September, 2023.



JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE